IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

IN RE:	)	
	)	
CYNTHIA PULLEN	)	
	)	
Debtor.	)	**No. 3:94CV185-D**
	)	**(Consolidated with**
	)	**No. 3:95CV10-D)**
	)	**(Bank. No. 92-10988)**
----------	)	
	)	
CYNTHIA D. PULLEN,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
VICKI TYLER, E.L. BADDLEY, MARJORIE BADDLEY	)	
	)	
Appellees.	)	
----------	)	

MEMORANDUM OPINION

This matter comes before the undersigned on appeal from United States Bankruptcy Court, Northern District of Mississippi. Appellant Cynthia Pullen appeals the bankruptcy court's decision that loans from appellees Vicki Tyler and Marjorie Baddley should be excepted from the debtor's general discharge pursuant to 11 U.S.C. § 523(a)(2). Pullen argues that the loans should not be excepted from the general discharge. Appellees cross appeal claiming that, if this court finds that the bankruptcy court erred in finding that the loans were nondischargeable, the lower court also erred in denying the Objection to the general discharge. Cross-Appellants seek reversal on this issue only if this court finds in favor of appellant Pullen on her appeal. After a thorough review of the record in this cause, the undersigned is of the opinion that the bankruptcy court's finding that the loans from

Tyler and Baddley are nondischargeable pursuant to 11 U.S.C. § 523(a)(2) was not clearly erroneous, therefore, the decision will be affirmed.

FACTUAL BACKGROUND

The facts here are not in dispute. On April 19, 1991, Cynthia Pullen borrowed $35,000 from Vicki Tyler and executed a promissory note in connection thereto. Tyler obtained a loan from Metropolitan Federal Savings & Loan in Memphis, Tennessee in order to fund the loan. Pullen executed a second promissory note on July 1, 1991, extending the deadline to pay the April 19 note to January 1, 1992. Pullen executed a check made payable to Metropolitan Federal in the amount of $35,000 on or about March 7, 1992, to pay the Tyler loan. The check was returned for insufficient funds. To this day, debtor has failed to repay the loan to Ms. Tyler.

Pullen also borrowed a substantial amount of money from Tyler's mother, Marjorie Baddley. On November 11, 1991, she borrowed $10,000 from Baddley and executed a note in connection thereto. On February 4, 1992, Pullen requested another loan of $50,000 from Baddley but was refused. However, Baddley changed her mind and loaned Pullen another $20,000 evidenced by another promissory note. Pullen has also failed to pay Baddley on either promissory note.

Ms. Pullen filed bankruptcy on March 19, 1992. Tyler and Baddley filed adversary proceedings against her for repayment of the aforesaid loans. United States Bankruptcy Judge David W. Houston, III, found the loans to be nondischargeable pursuant to 11

U.S.C. § 523(a)(2) because Pullen had obtained the loans under false pretenses. Pullen has filed this appeal.

DISCUSSION

I.

This court has appellate jurisdiction on appeals from the bankruptcy court pursuant to 28 U.S.C. 158(a), which reads in pertinent part:

> (a) The district court of the United States shall have jurisdiction to hear appeals from final judgments, orders and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judge under Section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

The court reviews the bankruptcy court's findings of fact under the clearly erroneous standard, while conclusions of law are reviewed *de novo*. Matter of Clark Pipe and Supply Co., Inc., 893 F.2d 693, 697-98 (5th Cir. 1990); Federal Rule of Bankruptcy Procedure 8013.

II.

The bankruptcy court held that the loans from appellees to the debtor were obtained under false pretenses and, therefore, nondischargeable. Section 523(a)(2)(A) provides the following exception to discharge:

> (a) A discharge under section 727... of this title does not discharge an individual debtor from any debt-
>
> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by-

> (A) false pretenses, a false representation, or actual fraud....

11 U.S.C. § 523(a)(2)(A) (1993). Pullen argues that, based upon her prior success in repaying loans, she fully intended to pay the loans back. She claims that the necessary intent to defraud the appellees is not present.

Appellees argue that the evidence clearly supports the lower court's finding of false pretenses. Specifically, when Pullen borrowed from Tyler, she told her that the money was needed to help her mother through some financial difficulty and that she would pay the money back in thirty (30) days with interest. (Tr. Trans. p. 6). Pullen also told Tyler that she would sell her stock in Columbia Gulf Gas to pay the loan back if necessary. Up until she filed bankruptcy, Pullen repeatedly indicated that she owned stock in Columbia Gulf Gas and promised to pay as soon as possible. She did not own stock in the company. Tyler's unrefuted testimony established that she relied upon the debtor's misrepresentations in her decision to loan the money to Pullen. (Tr. Trans. pp. 7, 21-22).

In regard to the loan from Baddley, Pullen claimed that she needed the money because her mother had mortgaged property and needed to pay the loan. (Tr. Trans. p. 25). Pullen told Baddley that she would sell land in Independence, Mississippi to cover the loan. (Tr. Trans. 26-27). Pullen did not own the real property she promised to sell. Baddley testified that she did rely on the misrepresentation in making the loan. Apparently at the request of

Pullen, neither Tyler nor Baddley, Tyler's mother, knew the other had loaned money to Pullen. (Tr. Trans. at 20).

As mentioned, the bankruptcy court concluded that Pullen obtained the loans from Tyler and Baddley under false pretenses. This court cannot overturn this decision unless the findings are clearly erroneous. The record reflects that she falsely represented that she owned stock in Columbia Gulf Gas in order to persuade Tyler to loan the money. Likewise, her false representations in regard to ownership of land in Independence, Mississippi helped induce Baddley to make her a loan. She also misrepresented to both appellees that the loan was needed to help her mother through some financial difficulties. Pullen could not recall what she had spent the loaned money on. Although Pullen does not deny the aforesaid misrepresentations, she claims that because she suffered from bi-polar manic depression she could not form the requisite intent necessary for establishing false pretenses under § 523(a)(2)(A). She claims that she had every intention of repaying the loaned money. Pullen cites the Louisiana bankruptcy court's decision in In Re Fontenot, 89 B.R. 575 (Bkrtcy.W.D.La. 1988) in support of her claim that a bi-polar manic depressive cannot form the requisite intent to fraud another. In that case, Mr. Fontenot suffered from a similar bi-polar condition as Ms. Pullen did here. He was an architect retained to design and supervise the construction of an addition to a residence. Although he completed the construction work, Fontenot failed to pay his subcontractors even though he had received total compensation for

the job, which included all labor and material costs for the project. Fontenot had used the money that he received for the job to pay similar obligations from prior projects. The subcontractors filed liens against the residence. At trial he testified that he did not perceive himself to be in financial trouble when he paid the earlier obligations and that he fully intended to pay the labor and material costs pertaining to the residence out of other funds. Apparently, Mr. Fontenot had used this procedure in the past. The owner ultimately paid the costs in the amount of $15,588, and later sued for nondischargeability of the debt under § 523(a)(2)(A) in Fontenot's subsequent bankruptcy. The bankruptcy court held that the debt was dischargeable. Id. at 580-82. In so ruling, the court found that the evidence was clear that Fontenot intended to pay his subcontractors. The court further stated that:

> Mr. Fontenot's manic states during bi-polar depression, together with credible testimony that it is [sic] his intent to pay the materialmen on the Dutreix job, precludes a finding that he directly and actively intended to cheat another. Mr. Fontenot's experienced high states of optimism is consistent with the subjective good-faith intent to fulfill his obligations. Id. at 581.

Although, the Fontenot case appears to support Pullen's position, the facts are distinguishable. Ms. Pullen testified at the bankruptcy hearing that she had every intention of paying off the loans from Tyler and Baddley. And, she believed, however irrationally, that she would be able to pay them. However, as distinguished from Fontenot, Pullen falsely represented or pretended to own certain shares of stock and real property in order to convince appellees that she was good for the money. She further

falsely indicated that the money was needed for her mother. Unrefuted testimony by the appellees established that they relied on these false representations in loaning Pullen the money. Although Ms. Pullen's condition may explain her optimism in believing that she could pay back the loans, it does not make it impossible for her to obtain property under false pretenses. See Id. at 581 (noting that bi-polar depression would not make it impossible to design and execute plan to cheat).

The bankruptcy court of Minnesota reached a similar conclusion in In Re Routson, 160 B.R. 595, 608-10 (Bkrtcy.D.Minn. 1993). There the court found that, although debtor had every intention to pay his obligations, fraud was committed by false representation that he would comply with an agreement between the parties on how the obligations would be met. Mr. Routson entered into an agreement with Universal Pontiac for the sale and purchase of the car dealership. The parties entered into an Interim Management Agreement ("Management Agreement") which allowed Routson to operate the dealership until the purchase was completed. During the period, from his agreement to purchase Universal Pontiac through his operation of the dealership under the Management Agreement, Routson suffered from a bi-polar, manic-depressive condition. While operating the dealership, Routson sold thirty (30) vehicles, secured by Norwest Bank, N.A. ("Norwest") under a Universal Pontiac floor plan, without paying for them or accounting to Universal for the proceeds as required under the floor plan. The record reflected that Routson was very familiar with the floor plan

agreement and obligations and responsibilities thereto based on his extensive past experience in the automobile industry. Payment of the floor plan was guaranteed by Universal Pontiac, who suffered a loss of $326,621 as a result of Mr. Routson's conduct. Universal Pontiac sought a judgment of nondischargeability pursuant to § 523(a)(2)(A). The court found that, although Routson had every intention of paying his obligations, he never intended to comply with the floor plan agreements and, as such, committed fraud. The court explained by stating that:

> The floor plan arrangement was not a minor matter in the transaction between the parties. It provided a substantial continuing source of credit, without which Mr. Routson could not operate Universal Pontiac. Mr. Mattox remained personally liable on the account, by his guarantee. These gentlemen were both intimately familiar with the operation of motor vehicle dealerships. They both understood the concept of floor planning: how it works; what the responsibilities of the borrower are; and, the importance of compliance with the terms of the Floor Plan Agreements until the purchase could be finally closed and Mr. Mattox was no longer involved. Without such an implied representation and expectation, there would have been no transaction.
>
> Mr. Routson never intended to comply with the Floor Plan Agreements. His actions on the very first day of operating Universal Pontiac present ample evidence. Mr. Routson closed the sale on a Norwest floor planned vehicle on May 1, 1991, deposited the proceeds into his personal account, and used the value created for personal expenses. Id. at 610.

In the present case, assuming Pullen believed, however irrationally, that she would be able to pay Tyler and Baddley, her fraud was her false representation that she could cover the loan by selling her stock in Columbia Gas or by selling off real property she owned in Independence, Mississippi. In addition, she misrepresented that she needed the loan for her mother, who

incidently was a life-long friend of both appellees. Accordingly, the court is of the opinion that the bankruptcy court's finding that she obtained the loan under false pretenses was not clearly erroneous; therefore, the court is in agreement with the bankruptcy court that these debts are nondischargeable pursuant to § 523(a)(2)(A).

CONCLUSION

The bankruptcy court's decision that the loans from Tyler and Baddley to Pullen were nondischargeable pursuant to § 523(a)(2)(A) because they were obtained under false pretenses was not clearly erroneous. Therefore, the decision will be affirmed.

An order in accordance with this memorandum opinion shall issue this _____ of August, 1995.

United States District Judge

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	)	
Appellees.	)	
----------	)	

ORDER AFFIRMING BANKRUPTCY COURT'S DECISION

Pursuant to a memorandum opinion entered this day, it is hereby ORDERED **that:**

1) the bankruptcy court's ORDER of June 19, 1994, finding that Pullen obtained loans from appellees Tyler and Baddley under false pretenses and, therefore, that the loans were nondischargeable pursuant to 11 U.S.C. § 523(a)(2) be, and it is hereby, AFFIRMED.

ORDERED **this _____ day of August, 1995.**

_____
United States District Judge